

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

CASE NO. 04-11539 JLT 2006 MAR 21, P 12:44

U.S. DISTRICT COURT
DISTRICT OF MASS.

WALTER STICKLE, ANTHONY)
CALIENDO, JOHN PITINGOLO and)
DANIEL FISHER,)
Plaintiffs)
)
)
v.)
)
ARTHUR ORFANOS,)
Defendant)
)

**SUPPLEMENT TO DEFENDANTS' MOTION
TO DISMISS CLAIMS OF THE PLAINTIFFS**

NOW COMES the Defendant in the above-captioned matter and respectfully move this Honorable Court to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

1. The Defendant made application to the United States Patent and Trademark which was accepted on or about April 19, 2004. The Defendant was notified as same, as "owner" of the Trademark..

2. The Defendant did offer goods or services or use the mark in commerce. Registering the domain name does not constitute commercial use. See: CCBN.com, Inc. v. C-Call.com, Inc., 1999 U.S. Dist. LEXIS 18187 (D. Ma. 11/18/99)

3. On October 27, 2004, the Defendant, Mr. Orfanos received a notice

from United States Patent and Trademark Office, stating that his application was rejected under Trademark Act Section 2(d), 15 U.S.C §1052(d), “because the applicant’s mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. 2194702 as to be likely to cause confusion, to cause mistake or to deceive.”

4. The Plaintiffs’ included in their testimonies, concerns of possible and potential “legal problems” of using the name or similarity of “PINK FLOYD” during discussion of changing the name of the band from The Mood® (See Plaintiffs exhibit A affidavit of Anthony Caliendo ¶ 8, Exhibit D, affidavit of Daniel Fisher ¶ 4, Exhibit E, affidavit of Eamon Tighe ¶ 4)

5. The plaintiffs are uncertain of their Trademark ownership or trademark rights, and filed action unnecessarily, moreover, frivolously. They have made no previous efforts or attempts to research or observe under law or to make application with The United States Patent and Trademark Office. The Plaintiffs are not entitled to remedy under U.S.C 15 §1125 (c)(1)

6. The Plaintiffs have suffered no damages whatsoever, and have not been harmed in any way. “While the Plaintiffs claim that Defendant infringed on their marks, The Court is not bound by Plaintiffs’ legal conclusions. Instead, the Court must test the legal sufficiency of the Complaint by its factual allegations”. *See: HQM Ltd. and Hatfield, Inc. v. William Hatfield*, 1999 U.S. Dist. LEXIS 18598 (D. Md. Dec. 2, 1999).

7. The Plaintiffs have perjured themselves on several instances in an attempt to cause harm to the defendant and to manipulate the justice of the honorable court, by lying and providing misleading and contradictory statements in their sworn testimony.

A. Caliendo Affidavit (Exhibit A, ¶ 4, ¶ 5, ¶ 7, ¶ 12, ¶ 14, ¶ 22), Stickle Affidavit (Exhibit B. ¶ 7, ¶ 16, ¶ 17), Pitingolo Affidavit (exhibit C. ¶ 10, ¶ 11), Tighe Affidavit (Exhibit E. ¶ 3), R. Caliendo Affidavit (Exhibit J. ¶ 4)

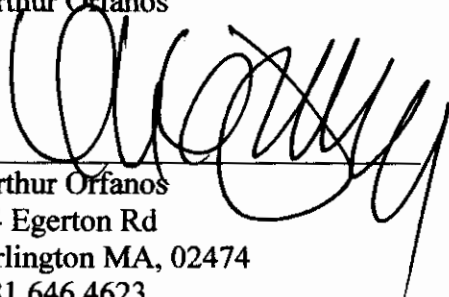
8. These false and misleading testimonies could have posed a serious consequence and damages to the Defendant, more importantly, they impede justice of the honorable court.

9. The Defendant reminds the honorable court that he has no formal training or experience with the practice of law, and wishes to request leniency from the honorable court with regards to this matter. therefore, the defendant requests that the claims of the plaintiffs be dismissed.

WHEREFORE, the Defendant respectfully request that all claims of the Plaintiffs, Anthony Caliendo, Walter Stickle, John Pitingolo and Daniel Fisher, in this matter be dismissed with prejudice and without costs.

Dated March 20, 2006

Respectfully submitted,
Arthur Orfanos



Arthur Orfanos
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Arlington MA, 02474
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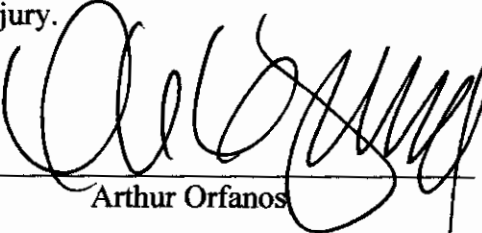
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Supplement to Motion to Dismiss Claims of the Plaintiffs was this day served upon Plaintiffs by mailing same first class Postage prepaid to: Michael B Newman, Attorney of Plaintiff of, Clark Hunt and Embry, 55 Cambridge Parkway, Cambridge, MA 02141.

SIGNED under the pains and penalties of perjury.

Date March 20, 2006



Arthur Orfanos